

Town of Amherst  
Zoning Board of Appeals - Special Permit

*DECISION*

**Applicant:** H. Duncan Rollason, III

**Date Application filed with the Town Clerk:** December 13, 2004

**Nature of request:** Petitioner seeks a Special Permit for a flag lot under Section 6.3 of the Zoning Bylaw.

**Location of property:** 63 Red Gate Lane, (Map 11D, Parcel 165, R-N Zone)

**Legal notice:** Published in the Daily Hampshire Gazette on December 29, 2004, and January 5, 2005, and sent to abutters on December 21, 2004.

**Board members:** Zina Tillona, Tom Simpson and Barbara Ford

**Submissions:**

The applicants submitted the following documents:

- A Plan entitled "Subdivision Approval Not Required", prepared for H. Duncan Rollason, III, by Harold L. Eaton and Associates, Inc., dated November 2, 2004.

The Planning Department submitted Memorandum #2005-01, which commented on zoning, dimensional requirements, Conservation Department review, Planning Board endorsement of the ANR plan, Phased Growth and other issues.

**Site Visit:** January 11, 2005

Board members Zina Tillona, Tom Simpson and Barbara Ford attended the site visit. They were met by the applicant's attorney, Peter MacConnell. At the site visit the Board observed the following:

- The location of the property in a neighborhood of older homes on large lots surrounded by mature trees;
- The existing wood frame house on the part of the lot which is proposed to become the frontage lot;
- Three large mature trees located near or in the proposed access strip for the flag lot;
- The topography of the site which slopes away from the road;
- The existing circular driveway which serves the existing house.

**Public Hearing:** January 13, 2005.

The public hearing was held in the Town Room, Town Hall. Attorney Peter MacConnell presented the petition, and made the following points:

- Mr. Rollason recently bought the property;
- The proposed frontage lot will contain 20,005 square feet;
- The proposed flag lot will contain 52,931 square feet, with 5,471 square feet for the access strip and 47,460 square feet for the building area;
- Mr. Rollason has not put the lot on the market and has no prospective purchaser at this time; he has no specific plan for a building or a driveway;
- The proposal meets the requirements of Section 6.3 of the Zoning Bylaw, for flag lots, as follows:
  - Section 6.32 requires that the area of a flag lot exclusive of access strip shall be at least double the minimum lot area required for a frontage lot in the particular zoning district in which the property is located. In this case a frontage lot is required to contain 20,000 square feet. The proposed flag lot will contain 47,460 square feet, exclusive of access strip, and thus exceeds the requirement.
  - Section 6.33 requires that the access strip shall have a minimum frontage and width of 40 feet. The proposed access strip meets this requirement; it is 40 feet wide and has 42.18 feet of frontage.
  - Section 6.34 requires that the width of a flag lot at the building site shall be equal to or exceed the frontage requirement for that district. In this case the frontage requirement is 120 feet. The width of this flag lot at the building site is approximately 186 feet and thus meets this requirement.
  - Section 6.35 requires that the building area of a flag lot be capable of containing a circle whose diameter is equal to or greater than the minimum frontage requirement for that district. The proposed lot is capable of containing a building circle of 120 feet.
  - Section 6.38 requires that there be no more than three flag lots created from a single parcel. In this case only one flag lot will be created.
  - Section 6.37 requires that the access drive to a flag lot meet the requirements of Section 7.7 of the Bylaw. The access drive for this lot has not yet been designed. The Town Engineer, Jason Skeels has stated that he will limit the number of curb cuts for the two newly-created lots to a total of two. If the existing circular drive for the frontage lot is retained, then the driveway for the flag lot will share one of the curb cuts with the frontage lot. If the existing circular drive is not retained then the driveway for the flag lot will be a separate drive. In either case, the grade of the driveway will not exceed a 5% grade for the first 50 feet and will not exceed 10% at any point, in accordance with Sections 7.714 and 7.715 of the Zoning Bylaw. If it is a common drive, it will be 16 feet wide with 2 foot shoulders as

required by Section 7.712 of the Bylaw. The number of curb cuts will be limited to two for the two lots.

Mr. Mac Connell presented a written list describing how the proposal complies with the criteria of Section 10.38 of the Zoning Bylaw and he reviewed this list with the Board members, item by item.

Mr. Simpson asked why the proposed frontage lot was calculated to be just slightly over 20,000 square feet. He was concerned that if the lot were not properly laid out on the site, by a surveyor, that it could end up being smaller than the required 20,000 square feet. The Board discussed this issue at length and concluded that the plan submitted to the Board with the lot area and bearings and distances written on it (the "Approval Not Required" plan), when recorded in the Registry of Deeds, will govern as to the exact legal size of the lot over any errors that might be made in laying out the lot in the field.

Mr. MacConnell responded that the frontage lot was proposed to be the minimum lot size allowed in the R-N zone in order to allow the flag lot to be larger and thus have more flexibility for locating the new house. The proposed flag lot has sloping topography which may limit placement of the house.

Ms. Ford noted that the Board will eventually want to see a landscape plan.

Mr. MacConnell responded that the Board would probably want to see a driveway plan and a plan showing the proposed location of the new house as well as a landscape plan, prior to construction. He noted that two of the trees that are near the front of the lot are not healthy and will probably be removed, but that a driveway can be designed that will not require removal of many other trees.

Ms. Tillona noted that the Board will want to see the footprint and elevation of the proposed house.

Ms. Tillona also asked about the history of the property. She said that there had been a concern on the part of the neighbors about the birds and trees on the property. She asked if this lot had always been privately owned, and if it had been part of a larger parcel at one time.

Mr. MacConnell responded by showing a plan that had been found and annotated during the title search process. The plan showed that the lot in question had, in the late 1940's or 1950's, been divided into two lots, one with frontage and one without frontage, the back lot having access over a strip along the edge of the frontage lot.

Ms. Tillona introduced into the record a letter from Arthur and Rose Quinton of 75

Red Gate Lane, dated January 3, 2005, which expressed concern about the proposed flag lot and stated the Quintons' opposition to the application. The Quintons had particular concern about preserving the character of the area as a low-density neighborhood and about the bird population in the area.

Ms. Tillona also introduced into the record an email letter from Jonathan Klate and Carlotta Willis, of 47 Red Gate Lane, dated January 13, 2005, in opposition to the proposed flag lot. Since Mr. Klate was present at the hearing, Ms. Tillona did not read his letter, but instead invited Mr. Klate to make his points in person.

Several members of the public spoke to the petition.

Susan Sheridan of 68 Maplewood Drive spoke in opposition to the application. Her backyard abuts the wooded area which is proposed to become the building area for the flag lot. She called the wooded area a "bird sanctuary". She said that the neighbors need screening to create a sense of privacy. She wouldn't want the site to be "clear cut".

Deborah Arak of 60 Maplewood Drive spoke about the petition without expressing opposition or support. She lives next to Ms. Sheridan and she said that she wasn't aware that the piece of land in question could be developed.

Joe Brophy of 70 Red Gate Lane spoke in opposition. His house is across the street from the proposed flag lot. He was concerned that two houses could be built on the lot. He thought the lot was large enough to contain two building circles. He commented on the elevation difference across the lot, from the area containing the building circle to the edge of the road. He noted that sewage would need to be pumped from the proposed house up to a line in the road.

Jonathan Klate of 47 Red Gate Lane spoke in opposition to the proposal. He is an abutter. He was concerned that the aesthetics of the neighborhood and the lifestyle of the neighbors will be affected. He reiterated the comments contained in his letter, referred to above and on file in the Planning Department, making the following comments:

- His own property is a bird counting station for Cornell University.
- He and his wife are concerned about disruption in the bird habitat if the adjacent parcel is built upon.
- The proposed frontage lot with the existing house on it will be very small.
- The neighborhood has a settled, quiet character and the proposed construction would cause substantial disruption to this character.
- The former owner did not intend that the property would be divided and developed in this way.

- The current owner has an out-of-state address and sees the property as an investment.
- If the current application is approved, it may open the way for development of the open land to the east of the property.

Martha Terry of the South Hadley Zoning Board of Appeals identified herself as a visitor and observer.

Mr. MacConnell responded to the questions and comments from the public as follows:

- It would not be possible to fit two houses on the flag lot because even though there may be room for two building circles there is not enough area to create another lot.
- The need to pump sanitary sewage, because of the topography, is a common practice these days for many homes and not a cause for concern or a reason to deny the permit.
- The Zoning Bylaw provides for flag lots by allowing the Zoning Board of Appeals to grant a Special Permit for flag lots; although construction can be disruptive to the neighborhood, flag lots often have the benefit of having the view of the house from the street shielded.
- This proposal meets the criteria set forth in Section 10.38 of the Zoning Bylaw.

There was a lengthy discussion of the potential for development of a large adjacent parcel, known as the Anderson property. Ms. Tillona noted that this adjacent parcel might be developed independent of the flag lot in question.

Jonathan Klate stated that the Special Permit should include a provision that would limit development on the site to one house. He discussed the potential for the flag lot to become part of a larger development involving the large adjacent Anderson parcel. He expressed concern that the flag lot could become part of a future subdivision.

Ms. Tillona noted that the Board can only focus on the proposal before it and cannot speculate about future development.

Mr. MacConnell noted that a Special Permit for a flag lot expires in two years, if it is not exercised. After that, the applicant would need to apply for renewal of the permit.

Ms. Ford MOVED to close the evidentiary portion of the public hearing. Mr. Simpson SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

**Public Meeting**

At the Public Meeting, the Board discussed conditions that might be established for this permit in response to concerns of neighbors and to protect the semi-rural character of the neighborhood.

**Findings:**

Under Zoning Bylaw Section 6.3 the Board found that:

- 6.32 – The area of the flag lot, exclusive of access strip is double the minimum lot area for the R-N district; the required area is two times 20,000 square feet and the proposed lot area is 47,460 square feet, exclusive of access strip, thus meeting this requirement.
- 6.33 – The lot has an access strip with a minimum street frontage of forty feet and a minimum width of forty feet between the street and the building area; the access strip is less than 400 feet long; the access strip has no change of direction greater than 45 degrees.
- 6.34 – The width of the lot at the building area exceeds the frontage requirement of 120 feet.
- 6.35 – The building area is capable of containing a circle whose diameter is equal to or greater than the frontage requirement of 120 feet.
- 6.36 and 6.38 – There is only one flag lot proposed and none existing adjacent to the proposed lot.
- 6.37 – The conditions will require that a plan be submitted for approval showing that access to the lot meets the requirements of Section 7.7.

Under Zoning Bylaw Section 10.38 the Board found that:

- 10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the property is surrounded by single-family houses on large lots; the proposed flag lot will contain a single-family house on a lot exceeding one acre in size.
- 10.382 – The proposal would not constitute a nuisance because the use will be that of a single-family house and the conditions of the permit will require that site plans and architectural plans be submitted for the Board's approval.
- 10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because the number of curb cuts for the two lots being created, the frontage lot and the flag lot, will be limited to a total of two; this number of curb cuts is consistent with the limit of one curb cut per house typical for the rest of the street.
- 10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the conditions of the permit will require that site plans and architectural plans be submitted for the Board's approval prior to the issuance of a building permit.
- 10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because the use will be that of a single-family house, a use that is typical in the neighborhood.

- 10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because the conditions of the permit will require that site plans be submitted for the Board's approval; these site plans will show the required two parking spaces for the single-family dwelling unit; no signs are being proposed at this time.
- 10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because, prior to construction, the property owner will be required to submit plans to the Building Commissioner showing that adequate methods for sewage disposal have been designed and will be constructed; refuse, recyclables and other wastes will be disposed of in a manner typical of other single-family houses in the town.
- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the conditions will include a requirement that all exterior lighting be down cast and not shine onto adjacent properties or streets.
- 10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the current proposal is for a single-family house on a one-acre lot and the applicant will be required to submit site and architectural plans and elevations to the Board for approval prior to the issuance of a building permit.
- 10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

### **Zoning Board Decision**

Zina Tillona MOVED to approve the application, with conditions. Tom Simpson SECONDED the motion. For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to H. Duncan Rollason, III, based on the plan entitled "Subdivision Approval Not Required" prepared for H. Duncan Rollason, III, by Harold L. Eaton and Associates, Inc., dated November 2, 2004, to create a flag lot, under Section 6.3 of the Zoning Bylaw, at 63 Red Gate Lane, (Map 11D, Parcel 165, R-N Zone).

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ZINA TILLONA

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TOM SIMPSON

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BARBARA FORD

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
in the Hampshire County Registry of Deeds.

Town of Amherst  
Zoning Board of Appeals

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals, based on the plan entitled "Subdivision Approval Not Required" prepared for H. Duncan Rollason, III, by Harold L. Eaton and Associates, Inc., dated November 2, 2004, hereby grants a Special Permit to H. Duncan Rollason, III, to create a flag lot, under Section 6.3 of the Zoning Bylaw, at 63 Red Gate Lane, (Map 11D, Parcel 165, R-N Zone) with the following conditions:

1. Prior to the issuance of a building permit the applicant shall submit to the Board for approval a site plan showing:
  - Locations of all existing trees over 6" DBH (diameter at breast height) within the area of construction;
  - Locations of all trees over 6" DBH to be removed within the area of construction; the trees to be removed are to be flagged in the field for identification by the Board;
  - Locations of all trees over 6" DBH to be removed outside of the area of construction; the trees to be removed are to be flagged in the field for identification by the Board;
  - The location and first floor elevation of the proposed house;
  - The location and grading of the proposed driveway;
  - Locations, species and size of proposed landscape plantings.
3. Prior to the issuance of a building permit the applicant shall submit to the Board for approval architectural plans and elevations of the house.
4. The driveway shall be built in accordance with Section 7.7 of the Zoning Bylaw.
5. There shall be no more than a total of two curb cuts to serve the two lots being created.
6. No cutting of trees shall occur within the side and rear yard setbacks, as set forth in Table 3 – Dimensional Regulations of the Zoning Bylaw.
7. All exterior lighting shall be down cast and shall not shine on adjacent properties or streets.



8. In accordance with Article 14, Phased Growth, of the Zoning Bylaw, this request is subject to Section 14.52. Development authorizations are available as of February 2005.

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ZINA TILLONA, Chair  
Amherst Zoning Board of Appeals

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DATE